1948 File No. J. 342/48

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Legal DEPARTMENT

A BRANCH

Subject:— Civil Suit No. 1368 of 1947.

Hanmantrao A. Kalgi --- Plff.

Versus

The Province of Bombay --- Defts.

— For a declaration that the "triennial general election of the Bijapur Dist. Local Boards held on 31st March 1947 are illegal and void and for an injunction restraining the defendants from calling a meeting of the Board or officiating as a member thereof until fresh elections are held

D. 16/E

File No. J 342/48

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		v/s.	
		The Province of Bomba deft.	
1)	Printed G.R.L.D. 9597 30th Sep. 1947.	The triennial general elections of the Bij. District Local Board, are illegal, and void. Sanctioning the defence of the suit.	
2)	G.R.L.D. 7800 16th August 1948	Recording the result of the suit.	

Report under Rule 118 of the Law Officers' Rules in respect of Civil Suit No.136/47 of the Court of the Civ: Judge, Senior Division, Bijapur.

Hanmantarao A.Kalgi of Muddebihal.

Vs.

1. The Collector of Bijapur.
2. Mr.S.B.Desai of Sulla, President, District Local Board, Bijapur.

This is a suit for the following reliefs:-

(a) That the elections to the District Local Board held throughout the District be declared illegal and void for the reasons stated in the plaint.

(b) That an injunction restraining the calling of the meeting of the New Board be granted against the defendants.

(c) That cost of the suit be awarded to the plaintiff and such other relief ~~xxxx~~ that that plaintiff is entitled to under the Law.

No notice has been given by the Plaintiff as required by Section 80 of C.P.C.

The facts of the case and the circumstances which lead to the suit are as under:-

The plaintiff is a voter of the District Local Boar Elections for non-muhammadan General Constituency from Muddebihal Taluka. As per notice issued under Rule 7 of the Local Board Election Rules, the election was held on 31-3-1947, with due regard to the provisions of the Act and Rules thereunder. The elections are already over and a list of the successufl members to the new Board has been duly published in the Bombay Government Gazette Part I. A new President has been elected for the new Board for the current triennium.

With a view to postpone the selection of the new President for the new Board for the current triennium, the plaintiff had filed this suit.

P.T.O.

The District Government Pleader, Bijapur who was consulted in the matter states that there are sufficient grounds to defend the suit. The grounds on which the suit is to be defended are:-

(1) The Plaintiff has instituted this suit without giving notice as required by Section 80 C.P.C.

(2) The Court has no jurisdiction to try this suit as cognizance of it is impliedly barred by the provisions of Section 19 of the Bombay Local Boards Act.

(3) The contention of the plaintiff that the elections are illegal and void is not correct.

(4) Plaintiff is not entitled to any of the relief prayed for by him.

(5) The elections held are perfectly legal and valid.

REMARKS.

The principal point in this case is that the plaintiff has instituted this suit without giving notice as required by Section 80 C.P.C. Besides the Court has no jurisdiction to try this suit as it is barred by the provisions of Section 19 of the Bombay Local Boards Act.

In view of the above opinion of the District Government Pleader, the suit can be defended. The District Government Pleader, Bijapur may kindly be given necessary instructions in the matter.

12/7

Collector, Bijapur.

13-7

Bijapur Civil Suit No. 136 of 1947.

In this suit the plaintiff who was a voter of the District Local Board Elections from the non-Muhammadan General Constituency in Muddebihal Taluka challenges the validity of the general elections of the District Local Board which were held on 31st March 1947. The suit is misconceived. The plaintiff's only remedy is by way of election petition under section 19 of the Bombay Local Boards Act, 1923. No suit can lie for ~~its~~ determining the validity of an election.

Sanction may be accorded to the defence of this suit on the lines of the appended brief.

THE ... COURT
F - 10223
D - 29-8-47
E - A

RW 22/8/47

A.L.R RK. 25/8

R.L.A. I am not quite sure whether the only remedy was by way of an election petition. Please An election can be set aside under the Local Boards Acts only on certain grounds. The grounds mentioned in the plaint do not apparently fall within the scope of the relevant section of the L.B. Act. Please consult Macklin's judgment on this point. Suit to avoid elections are in progress elsewhere C.J. Poona

28 AUG 1947 A

HE... & LO... SELF-GOVT.
B
File No. L.D.8837-A
Date 27-8-47
Serial No. 11169

with the PMS

27-8-1947

Seen (H and T.G.) 27/8

R 2578

27-8-47

Resubmitted with reference to R.L.A.'s note on the pre-page :-

I presume the R.L.A. has in mind the decision of Macklin J. in Hifzurraheman v.Hasansaheb 46 Bom.L.R. 371. That case was under sections 12 and 15 of the Bombay Municipal Boroughs Act 1925. There was an application under section 15 challenging the election of a successful candidate on the ground that the latter's wife was a school mistress in the employ of the municipality and he was therefore disqualified to be a candidate under section 12 of the Act. Macklin J. held that a Judge holding an inquiry under section 15(2) of Act has no power to unseat a candidate on the ground that he was disqualified by reason of section 12 of the Act. The reason is that the Judge's powers are "subject to the provisions of sub-section 3". At page 374 the learned Judge observes:-

> " The words "subject to the provisions of sub-section 3" are important. Though the exact meaning of the words "subject to" is not perhaps obvious, it is clear that in passing orders confirming or setting an election aside, the Judge must not lose sight of the provisions of sub-section(3). Sub-section(3) is in two parts; It provides that a candidate guilty of corrupt practices . . . . . shall be unseated, and that in every other case where the validity of an election is in dispute . . . . . the Judge shall scrutinize and count the votes and declare elected that candidate who has the greatest number of valid votes. No other specific power is given in terms to the Judge making an order under section 15. . . . .It is true that the beginning of the section is in general terms and does not restrict the power of a voter to question an election on any grounds, but I am not prepared to hold that this implies that the enquiring authority has a right to pass orders except in accordance with the express terms of sub-section(3). "

The case therefore decides that a Judge holding an inquiry under section15(2) of the Municipal Boroughs Act has no power to set aside an

election except on the ground that the candidate is guilty of corrupt practices. In all other cases he merely counts and scrutinizes the votes and declares the result accordingly.

This is not the case under section 19 of the Bombay Local Boards Act which governs the present suit. Sub-sections 1,2 and 3 of section 19 of the Local Boards Act are corresponding to section 15 sub-sections 1,2 and 3 of the Municipal Boroughs Act. However, unlike section 15(2) of the Municipal Boroughs Act, the provisions of sub-section (2) of the Local Boards Act are not "subject to the provisions of sub-section (3) ". This is the striking difference between section 19 of the Local Boards Act and section 15 of the Municipal Boroughs Act. Section 19(2) is in general terms and does not limit the Judge's powers to those set forth in sub-section(3) only.

However, sub-section(5) of section 19 requires further consideration. Under sub-section (5), the Judge holding an enquiry under section 19(2) shall not set aside the election the validity of which is questioned only on the ground of an error made by the officer charged with carrying out the rules made in this behalf under section 133 clause (b) or of an irregularity or informality not corruptly caused. The Local Board's election in this case is challenged on the sole ground that in holding the elections on 31st March 1947 the Collector contravened the provisions of section 17 of the Bombay Local Boards Act, 1923 It might be argued with justification that since under section 19 the Judge has no power to set aside an election on the ground of error or irregularity or informality, the only other remedy of a party who wishes to question the validity of an election on such grounds is by way of a civil suit. Even so, in this particular case there is no cause of action.

Section 17 requires that the election shall be held on such date as the Collector shall fix. The proviso to the section adds that when the elections are for the purpose of filling the places of members whose terms of office have expired, the date shall be not sooner than two months and not later than one month before the commencement of the terms of office of members of the board to which such elections are to be made. The elections of the Bijapur Local Board were held on 31st March 1947. The term of office of the member of the new board commenced on 1st May 1947. There is therefore no infringement of section 17 since the election was held neither sooner than two months nor later than one month before the commencement of the term of the new board. The plaintiff has also alleged that there has been an infringement of Rule 6(2) of the Local Board Election Rules which provides that the election should be held six weeks after the receipt of nomination papers, and that in this case the elections were held one day earlier than six weeks. The draft programme of the general election at page 3 of the file shows that the nomination papers were to be received upto 6 P.M. on 17th February 1947 while the election was held 41 days later i.e. six weeks minus one day. This was however a very slight and insignificant irregularity which could not have affected the result of the election. It is not a sufficient reason for setting aside the entire election, particularly having regard to the fact that the statutory requirement in section 17 has been complied with.

It is therefore submitted that the original defence of jurisdiction in para 1 of the brief may be retained and in addition the suit may be defended on merits as indicated in this note. If approved the brief will be suitable amended.

R.M
2/9/47

ALR
RLA

Cf put up 31 Bom 604, 61 Cal 980 +
55 All 608 RE

Submitted with the requisite reports
Office
for ALR

On further consideration I think the view taken by the R.L.A. is correct. I do not think it would be possible to contend that the Court has no jurisdiction to try this case. The present suit is filed for setting aside the whole general election. Section 19(1) of the Bombay Local Boards Act,1923 creates a tribunal for determining the validity of ~~any~~ election of ~~any~~ member of the local board or legality of any order ~~of~~ proceeding made or held under sec.18. In other words this section does not empower the tribunal to decide the validity or otherwise of a general election. A similar point arose in Bhaishankar Nanabhai v. The Municipal Corporation of Bombay (I.L.R. 31 Bom.604) There the question raised was whether the Chief Judge of the Small Cause Court had jurisdiction under section 33(1) of the City of Bombay Municipal Act,1888 to decide the validity of the whole general election. Section 33(1) of that Act was in these terms:-

> " If the qualification of any person declared to be elected for being a Councillor is disputed, or if the validity of any election is questioned, whether by reason of the improper rejection by the Commissioner of a nomination or of the improper reception or refusal of a vote, or for any other ~~xxxx~~ cause, any person enrolled in the Municipal election roll may at any time, within eight days after the result of the election has bee declared, apply to the Chief Judge of the Small Cause Court. "

It was held that the Chief Judge of the Small Cause Court can ~~set aside~~ reject That the election as a whole on ~~the~~ was invalid ground ~~xxxxxx~~ of invalidity, for the section, after specifying two permissible grounds of objection, provides that the validity of any election may be questioned "for any other cause" and these words are

wide enough to cover the ground of objection ~~xx~~ urged in this case." Since section 19(1) of the Bombay Local Boards Act does not empower the tribunal to set aside any election as a whole it appears that the suit would be tenable. However there is no objection to taking the plea of want of jurisdiction ~~for~~ the Court to entertain the present suit.

R.A. 12/9

R.L.A.

The plea may be taken
The onus also amended as
suggested by AS

R
12/9

Resubmitted.
OBM
15/9
A.S.

A.A. of the note dt. 2-9-1947
has been inserted in the
grounds of defence as para 8
The original plea of want of
jurisdiction has been retained
for whatever it is worth. The
defence may now be considered

RS
16/9

ACR RR 17/9

RLA R
16/9

Seen H & L.G.O.

Ret. to L.D.B. 24-9-47 with ffp.

Ord 19/9

Ord 19/9 v. myst
copies
sent

Civil Suit no. 136 of 1947.

In the Court of the Civil Judge(Sr.Dn.) Bijapur.

X X X X

Suit is dismissed for want of prosecution. The plaintiff to pay costs of defendant No. 1 and bear his own. Defendant No. 2 was not served. Vide Ex. 16.

Sd/- N.V.Ranaubhe

7-10-1947.

* True Copy of the order below Ex.1*.

Ahmadar

District Government Pleader,
Bijapur.

Belgian Circ. Instr. No 186
of 1917 is discussed for
insertion in Instructions. Please
see the note on p. 13 of C.C.
Circ which this instr. refers to
was discussed. No further action
in this direction has been
needed. No reply was required. DR

RW
15/10

ACR RE 16/10

16/10

Submitted
2. The result may be read
after the printed G.R. signed.
Feb
17-10

A.S. DR 18/10.

I don't think it is worth of time.

Suits.

Bijapur.

For a declaration that the triennial general elections of the Bijapur District Local Board held on 31st March 1947 are illegal and void and for an injunction restraining the defendants from calling a meeting of the board or officiating as members thereof until fresh elections are held.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 9597.

Bombay Castle, 30th September 1947.

Letter from the Collector of Bijapur, No. L.B.D. 148, dated the 14th July 1947—Forwarding papers in the suit noted in the margin and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BIJAPUR.

Civil Suit No. 136 of 1947.

anmantarao A. Kalgi ... ... Plaintiff;

versus

The Province of Bombay and another ... Defendants.

Endorsement by the Commissioner, Southern Division, No. L.S.T. 382, dated the 17th July 1947—Forwarding the above with his concurrence.

Memorandum to the District Government Pleader, Bijapur, No. 9596, dated the 30th September 1947—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay.

P. M. LAD,
Secretary to Government.

original

G. R., No. 9597, L. D., dated the 30th September 1947.

To

*The Health and Local Government Department,
*The Commissioner, Southern Division,
*The Collector of Bijapur,
The District Government Pleader, Bijapur (with two copies of the brief).

*With a copy of the brief.

No. of 1947.

Copy forwarded for information and guidance to

13 29 35

BIJAPUR CIVIL SUIT No. 136 OF 1947.

Chronological Statement of Facts.

The suit is filed by Mr. Hanmantrao A. Kalgi of Muddebihal against the Collector of Bijapur and others for a declaration that the triennial general elections of the Bijapur District Local Board held on 31st March 1947 are illegal and void and for an injunction restraining the defendants from calling a meeting of the board or officiating as members thereof until fresh elections are held.

2. The plaintiff was a voter for the District Local Board Elections from the non-Muhammadan General Constituency from the Muddebihal Taluka. The triennial general elections were held on 31st March 1947 and a list of the successful candidates was published in the *Bombay Government Gazette*, Part I. A new president has also been elected for the new board for the current triennium.

3. The plaintiff has now filed this suit without giving the statutory notice under section 80 of the Civil Procedure Code.

Grounds of Defence.

Jurisdiction.—It should be argued that the Court has no jurisdiction to entertain this suit. The Municipal Acts make specific provisions for challenging the validity of elections. Therefore an election cannot be questioned except on the grounds set forth in those provisions and except by an election petition (Halsbury : Laws of England, Vol. XII, page 471). In the case of the District Local Boards, section 19 of the Bombay Local Boards Act of 1923 lays down the procedure to be followed by any person challenging the validity of an election of a member or members of the Local Board. The remedy prescribed is by way of an election petition to the District Judge of the District within which the election has been or should have been held. The Plaintiff's only remedy is therefore to follow the procedure laid down in section 19 of the Act. He is not entitled to file a suit of this nature in the ordinary civil courts. This is based on the principle that when a statute creates a duty or imposes a liability and prescribes a specific remedy in case of neglect to perform the duty or discharge the liability, no remedy can be taken but the particular remedy prescribed by the statute [Chunilal *v.* Ahmedabad Municipality, 13 Bom.L.R., page 958; Thin Yick *v.* Secretary of State, I.L.R. (1939) 1 Cal. at pages 269-270].

2. The suit is also barred for want of notice of the suit under section 80 of the Civil Procedure Code. The provisions of that section are express, explicit and mandatory and absolutely debar the Civil Court from entertaining a suit which is instituted without compliance thereof (*See* Bhagchand *v.* Secretary of State, I.L.R. 51 Bom. 725).

3. On merits also there is no cause of action. Section 17 requires that the election shall be held on such date as the Collector shall fix. The proviso to the section adds that when the elections are for the purpose of filling the places of members whose terms of office have expired, the date shall be not sooner than two months and not later than one month before the commencement of the terms of office of members of the board to which such elections are to be made. The elections of the Bijapur Local Board were held on 31st March 1947. The term of office of the members of the new board commenced on 1st May 1947. There is therefore no infringement of section 17 since the election was held neither sooner than two months nor later than one month before the commencement of the term of the new board. The plaintiff has also alleged that there has been an infringement of rule 6 (2) of the Local Board Election Rules which provides that the election should be held six weeks after the receipt of nomination papers, and that in this case the elections were held one day earlier than six weeks. The draft programme of the general election at page 3 of the file shows that the nomination papers were to be received up to 6 p.m. on 17th February 1947 while the election was held 41 days later, i.e., six weeks minus one day. This was however a very slight and insignificant irregularity which could not have affected the result of the election. It is not a sufficient reason for setting aside the entire election, particularly having regard to the fact that the statutory requirement in section 17 has been complied with.

4. The suit is filed against the Collector of Bijapur in his official capacity and is therefore not maintainable. A public officer cannot be sued in his official capacity unless he is a Corporation sole (I.L.R. 51 Bom. 749 and I.L.R. 14 Lahore 330).

5. For the reasons set forth above, the suit fails and should be dismissed with costs.

Suits.
Bijapur.
For a declaration that the triennial general elections of the Bijapur District Local Board held on 31st March 1947 are illegal and void and for an injunction restraining the defendants from calling a meeting of the board or officiating as members thereof until fresh elections are held.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 7800
Bombay Castle, 16th August 1948.

Read Government Resolution, Legal Department No.9597, dated the 30th September 1947.

Endorsement from the District Government Pleader, Bijapur, No. 885, dated the 7th October 1947, stating that the suit noted in the margin was decided by the Civil Judge, Senior Division, Bijapur, on 7th October 1947, when the following order was passed :-

In the Court of the Civil Judge (Senior Division), Bijapur.	
Civil Suit No. 136 of 1947.	
Hanmantarao A. Kalgi ... Plaintiff;	
Vs.	
The Province of Bombay and another. ... Defendants.	

"Suit is dismissed for want of prosecution. The plaintiff to pay costs of defendant No.1 and bear his own. Defendant No.2 was not served."

RESOLUTION :- The result of the suit is recorded.

By order of the Governor of Bombay,

R.M. MEHTA,
Assistant Secretary to Government

To

The Health and Local Government Department,
The Commissioner, Senior Division,
The Collector of Bijapur.

LK. 14/8.